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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,809	12/05/2003	Daniel L. Shepherd	8029-A-1	1938
7590 10/30/2008				
Jordan M. Meschkow Meschkow & Gresham, PLC Suite 409 5727 North 7th Street Phoenix, AZ 85014			EXAMINER BRADFORD, CANDACE L	
			ART UNIT 3634	PAPER NUMBER
			MAIL DATE 10/30/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/729,809

**Applicant(s)**

SHEPHERD ET AL.

**Examiner**

CANDACE L. BRADFORD

**Art Unit**

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 5 and 11-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5 and 11-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/5508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Allowable Subject Matter***

The indicated allowability of claims 5 and 11 and 12-16 are withdrawn in view of the newly discovered reference(s) as applied below. Rejections based on the newly cited reference(s) follow.

***Claim Rejections - 35 USC § 112***

Claim 14 recites the limitation "said post" in line 3. It is unclear to the examiner which post the applicant is referring to. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

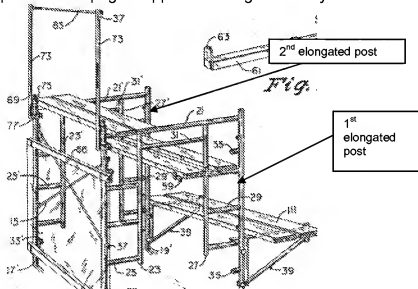
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

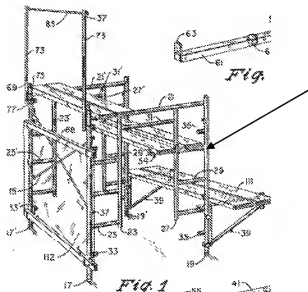
Claim 5 is rejected under 35 U.S.C. 102(b) as being anticipated by Gethmann (3392801). Gethmann discloses an access brace for a scaffold, said scaffold including a pair of bearers 59, a platform 111, supported by said pair of bearers, as best seen in Figure 1, and a guardrail system 21, for surrounding said platform, said access brace comprising, an elongate member having a first and second end, first and second engaging means 67, coupled to said second end, said first and second engaging means being configured to engage with said pair of bearers; a first post 35 extending from an intermediate portion of said elongate member, said first post being located at a first distance from said first end of said elongate member; and a second post 35 extending

from said intermediate portion of said elongate member, said second post being located at a second distance from said first end of said elongate member, said second distance being greater than said first distance, and said first and second posts being configured to couple with an upright support of said guardrail system



Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Gethmann (3392801). Gethmann discloses an access brace for a scaffold, said scaffold including a pair of bearers 29, a platform/support 111, supported by said pair of bearers, and a guardrail system 21 for surrounding said platform, said access brace comprising a first elongate member having a first and second end, first and second engaging means 67, coupled to said first and second end respectively, said first and second engaging means being configured to engage with said pair of bearers; and a post 35, extending from an intermediate portion of said first elongate member, said post being configured to couple with an upright support of said guardrail system; a second elongate member arranged substantially parallel to said first elongate member; and a support 111 extending

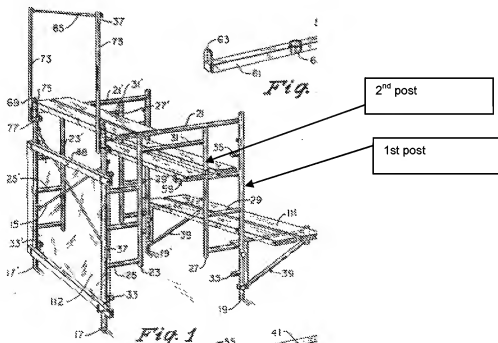
between said first and second elongate members for retaining said first and second elongate members in spaced relation, said support being arranged substantially perpendicular to said first and second elongate members and aligned with said post, as best seen in Figure 1.



Claim 12 is rejected under 35 U.S.C. 102(b) as being anticipated by Gethmann (3392801). Gethmann discloses a scaffold comprising a frame arrangement including a first and second bearer 29, extending between a first and second pair of vertical posts, a platform 111, supported by said first and second bearers 41, an access brace including an elongate member 45, having a first end and a second end, a first end hook 53, coupled to said first end and engaged with said first bearer, a second end hook 49, coupled to said second end and engaged with said second bearer 29, and a post 51, extending from an intermediate portion of said elongate member, said post being located a predetermined distance from said first end; and a guardrail system 21, surrounding said platform, said guardrail system including an upright support coupled

with said post, and said predetermined distance defining an opening in said guardrail system for access to said platform.

Claim 13 is rejected under 35 U.S.C. 102(b) as being anticipated by Gethmann (3392801). Gethmann discloses a scaffold as claimed in claim 12 wherein said post is a first post, said predetermined distance is a first distance, and said access brace further includes a second post extending from said intermediate portion of said elongate member, said second post being located at a second distance from said first end of said elongate member, said second distance being greater than said first distance, and said upright support is selectively coupled to one of said first and second posts.



Claim 14 is rejected under 35 U.S.C. 102(b) as being anticipated by Gethmann (3392801). Gethmann discloses a scaffold as claimed in claim 12 wherein said upright support of said guardrail system 21, is a tubular member 77 exhibiting an inner

diameter, and said post exhibits an outer diameter that is smaller than said inner diameter such that said post fits within said tubular member.

Claim 15 is rejected under 35 U.S.C. 102(b) as being anticipated by Gethmann (3392801). Gethmann discloses a scaffold as claimed in claim 12 wherein said elongate member 45, is a first elongate member, and said access brace further comprises a second elongate member 43, arranged substantially parallel to said first elongate member; and a support extending between said first and second elongate members for retaining said first and second elongate members in spaced relation.

Claim 16 is rejected under 35 U.S.C. 102(b) as being anticipated by Gethmann (3392801). Gethmann discloses a scaffold as claimed in claim 16 wherein said access brace further comprises a bracket coupled to said second elongate member and attached 55, to one of said vertical posts.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CANDACE L. BRADFORD whose telephone number is (571)272-8967. The examiner can normally be reached on 9am until 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Mitchell can be reached on (571) 272-7069. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/KATHERINE W MITCHELL/  
Supervisory Patent Examiner, Art  
Unit 3634



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Art Unit: 3634

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Candace L. Bradford  
Patent Examiner  
Art Unit 3634  
October 24, 2008